168.

SUPREME COURT OF THE UNITED STATES.

No. 40.

THE HEIRS OF WILLIAM EMERSON, PLAINTIFFS IN ERROR,

VERSUS.

CHARLES H. HALL.

ERROR FROM THE SUPREME COURT, EASTERN DISTRICT OF LOUISIANA.

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Langtree & O'Sullivan, Print.

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the Honorable the Judges of the Supreme Court of the State of Louisiana, greeting:

Because in the record and the proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Louisiana before you, or some of you, being the highest court of law or equity of the said State, in which a decision could be had in the said suit between Charles H. Hall and the heirs of Wm. Emerson, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said State, on the ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision was in favor of such, their validity; or wherein, was drawn in question the construction of a clause of the constitution or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege or exemption specially set up or claimed under such clause of the said constitution, treaty, statute, or commission, a manifest error has happened to the great damage of the said heirs of Wm, Emerson, as by their complaints appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf do command you, if judgment be therein given, that then under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of August next, in the said Supreme Court, to be then and there held, that the record and the proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws of the United States should be done.

Witness the Honorable R. B. Taney, Chief Justice of the said Supreme Court, this second Monday of January, in [SEAL.] the year of our Lord one thousand eight hundred and thirty-seven.

DUNCAN N. HENNEN,
Clerk Eastern District of Louisiana.

Allowed by F. X. MARTIN,
Senior Judge of the Supreme Court.

Fees, clerk U. S. Court, 2,00. Supreme Court. Filed May 5, 1837.
A. CUVELLIER,
Dis. Clerk.

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the Honorable the Judges, of the Supreme Court of the State of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment, a plea which is in the said Supreme Court of the State of Louisiana, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Charles H. Hall and the heirs of Wm. Emerson, wherein was drawn in question the valid of a treaty or statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said State, on the ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision was in favor of such, their validity; or, wherein was drawn in question, the construction of a clause of the constitution or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege or exemption specially set up or claimed under such clause of the said constitution, treaty, statute or commission, a manifest error has happened to the great damage of the said heirs of Wm. Emerson, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speed justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that then, under your seal, distictly and openly, you send the record and proceedings aforesaid, with all things concernings the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of August next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid, being inspected. the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable R. B. Taney, Chief Justice of the said Supreme Court, this second Monday of January, [SEAL.] in the year of our Lord one thousand eight hundred and thirty-seven.

(Signed) DUNCAN. N. HENNEN,
Clerk, East. Dist. of La.

Allowed by (Sd.) F. X. MARTIN,
Senior Judge of the Supreme Court.

United States of America, to Charles H. Hall, greeting.

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of August next, pursuant to a writ of error, filed in the clerk's office of the Supreme Court of the State of Louisiana, wherein the estate of William Emerson, is plaintiff in error, and you

are defendant in error, to show cause if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error, mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable R. B. Taney, Chief Justice of the Supreme Court of the United States, this second Monday of January, A. D. 1837.

F. X. MARTIN,
Senior Jndge of the Supreme Court.

Received July 3d, 1837, and having ascertained from the record, that the said Hall, upon whom this citation is directed to be served, resides in the city of New York, State of New York, I did on the same day, serve copy of said citation on Levi Pierce, esq., one of his attorneys, of record returned July 6th, 1837.

FRED. BRUSSON,
Sheriff of the Parish of Orleans (State of Louisiana.)

UNITED STATES OF AMERICA,
Supreme Court. E. D. State of Louisiana.

Transcript of the record of the proceedings had in the Probate Court for the parish and city of New Orleans, and in the Supreme Court of the State of Louisiana, for the Eastern District, in a certain suit, wherein Charles H. Hall, was plaintiff and appellee, and the estate of Wm. Emerson, was defendant and appellant.

STATE OF LOUISIANA, *parish and city of New Orleans.*
Court of Probates, estate of Wm. Emerson.

To the honorable Court of Probates, for the city and parish of New Orleans.

The petition of Chas. Henry Hall, residing in New York, in the State of New York, respectfully shows:

That the estate of Wm. Emerson, deceased, in this parish, and the said estate represented by Charles Byrne of New Orleans, curator appointed by this court, is justly indebted to your petitioner, in the sum of seventeen hundred and eighty $\frac{66}{100}\frac{1}{2}$ dollars, with interest from.

For this, that your petitioner in 1816, shipped from Spain a quantity of sherry wines, say 424 casks, consigned to John B. Murray & Son, New York, who made a large advance on the consignment to petitioner; that, in the fall of 1816, your petitioner desirous of trying a West India market, on the Spanish main for the said wines, applied to Hazzard & Williams, of said city of New York, for that purpose, who accordingly purchased and redeemed said wine of John B. Murray & Son, in order to export it to the West Indies, with the understanding that it should not prejudice said Hazzard & Williams, but that the wines should be sold in such time, that the proceeds might be received in New York, to discharge the notes which he might give in payment for the same. Accordingly as your petitioner shows, the said Hazzard & Williams, did purchase in 1817, four hundred and twenty-four casks of said wine, for which they gave promissory notes,

and shipped them on board of the brig *Sarah*, bound to the West Indies, they being the purchasers, and bound to pay for the same though the exportation was in tender for the benefit of petitioner.

And your petitioner shows that the said sherry wines was afterwards re-imported to the United States, to wit, the port of New Orleans, and was there seized by the U. S. for an alledged breach of the revenue laws, and a sale was thereby prevented; that when the notes of Hazzard & Williams, to John B. Murray & Sons, became due, complaint being made as to the payment, your petitioner applied to Chas. H. Hall, who took up the notes and received assignment of the 424 casks, from Hazzard & Williams, to ———— & Sons, who, afterwards on repayment to them of sums advanced, transferred back the 424 casks of sherry, and all right, title, and interest, in and to the same to your petitioner.

And he shows that in the mean time, to wit, in the said 424 casks wine, so seized were sold by order of the U. S. District Court, and were condemned, as forfeited for breach of the revenue laws; that the sale produced ten thousand eight hundred and eighty one dollars, and deducting costs, $10,684, which were distributed as follows:

To the United States, one *one half;* to the collector, to the naval officer, and to William Emerson, *surveyor*, each $1,780 $\frac{66}{100}$ which money was so received on the ——— day of ——— 1819, and your petitioner shows that said judgment of the U. S. Court was appealed from, and was reversed by the Supreme Court of the U. S. and a new trial ordered; that, on said new trial, Hazzard & Williams, the pltffs. obtained a verdict; that the United States appealed from the judgment rendered against them, but their appeal was dismissed by the Supreme Court, and the judgment confirmed; in which judgment the proceeds of said wine were ordered to be restored to the claimants, Hazard & Williams, the assignors of the present plaintiff.

And your petitioner shows, that he has often made amicable demand of said Emerson, during his life, and after his decease, of his curator, Chas. Byrne, but that no part has ever been paid of said debt, and said Charles Byrne refuses to acknowledge or admit said debt against the succession.

Wherefore, your petitioner prays, that said Charles Byrne, curator of the succession of ———— Emerson, dec'd, may be cited to appear and answer, and be decreed to allow said debt of $1,780 $\frac{66}{100}$, with interest from ———, until paid, and costs, &c., &c.; and that he may be also adjudged, ordered and decreed to pay the said $1,780 $\frac{66}{100}$ in the interest, and costs, &c.

(Signed,) ALFRED HENNEN,
(") L. PEIRCE,
Attys. for Petit'r.

Service accepted.

(Signed,) CHS. BYRNE.

ANSWER.

To the honorable the judge of the court of probates, in and for the parish and city of New Orleans. The answer of Chas. Byrne, curator and tutor of the minors Emerson, to the petition of Charles Henry Hall, respectfully represents:

That he denies the allegations in said petition contained, and denies that the estate of said Emerson is in any manner or way indebted to said Hall, in the amount claimed, or any part thereof; whereupon, he prays to be dismissed with costs. Are in duty bound, &c.

(Signed,) M. W. HOFFMAN.

In the court of probates, in and for the city and parish of New Orleans, Tuesday, 29th December, 1829.

Present, the honorable James Pitot, judge.

ESTATE OF WM. EMERSON,
CHAS. H. HALL,
vs.
THE SAID ESTATE.

On motion of Levi Peirce, esq., of counsel for the plaintiff, it is ordered by the court, that this case be set down for trial on Thursday, the seventh of January, one thousand eight and thirty, at 10 o'clock, A. M.

In the court of probates, in and for the city and parish of New Orleans, Thursday, 7th January, 1830.

Present, the honorable Jas. Pitot, judge.

ESTATE OF WM. EMERSON,
CHAS. H. HALL,
vs.
THE SAID ESTATE.

On motion of Levi Peirce, esq., of counsel for plaintiff, it is ordered by the court, that this case be continued till Thursday next, the 14th instant, at 9 o'clock, A. M.

In the court of probates, in and for the city and parish of New Orleans, Wednesday, 20th January, 1830.

Present, the honorable Jas. Pitot, judge.

ESTATE OF WM. EMERSON,
CHAS. H. HALL,
vs.
THE SAID ESTATE.

On motion of Levi Peirce, esq., of counsel for the plaintiff, it is ordered by the court, that this case be set down for trial on Thursday, the 28th instant, at 10 o'clock, A. M.

In the court of probates in and for the city and parish of New Orleans, Wednesday, 27th January, 1830.
Present, the honorable James Pitot, judge.

ESTATE OF WM. EMERSON.
CHAS. H. HALL,
vs.
SAID ESTATE.

On motion of L. Peirce, esq., for plff, it is ordered by the court, that this case be set down for trial on Thursday next, the 11th of February, at 10 o'clock, A. M.

TESTIMONY.

In the court of probates, in and for the city and parish of New Orleans, Thursday, 4th February, 1830.
Present, the honorable James Pitot, judge.

The record of the district court of the United States, against 422 casks of wine, is now introduced in evidence. Mr. Benjamin Story being duly sworn, says, that, on being presented with three documents now introduced in evidence, that he is acquainted with the hand-writing of the persons who signed the same. It is admitted, that Mr. Emerson was surveyor of the customs until his death, and before the year 1824, and when the 422 casks of wine were seized. The counsel for the plaintiff now introduces, in evidence, an account of fines, &c., signed by Beverly Chew, collector, which account is marked A, and now filed.

The counsel for the plaintiff, introduces the record of Thomas Williams, survivor, partner of the firm of Hazzard & Williams, against Wm. Emerson, from the first district court.

The account marked A, above introduced, is admitted by the parties to be correct.

DOCUMENT.

Dr. *Account of Fines, Penalties and Forfeitures. The United States* vs. 422 *casks Wine.* Cr.

The am't of costs allowed,	$197 00	By am't of judgment on bond, for appraised value,	$10,881 00
Nett proceeds carried below,	10,684 00		
	$10,881 00		$10,881 00
Collector's proportition,	$1,780 66½	By nett proceeds brought down,	$10,684 00
Naval officer's do.	1,780 66½		
Surveyor's do.	1,780 66½		
The U. S. proportion, being one moiety transferred to their ac't, 1st Dec., 1820,	5,342		
	$10,684 00		$10,684 00

Treasury Department,
REGISTER'S OFFICE, *April* 21, 1834.
Certified to be a true copy from the original.
(Signed,)
JOSEPH NOURSE, *Reg'r.*

COLLECTOR'S OFFICE, *New Orleans*, 31*st March*, 1820.
(Signed,)
BEV: CHEW, *Coll'r.*

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In the court of probates, in and for the city and parish of New Orleans.

ESTATE OF WM. EMERSON.
CHAS. H. HALL,
vs.
CHAS. BYRNE.

This cause came on this day for trial, when, after hearing the evidence, the court being satisfied with the truth of the allegation of plaintiff, do order, adjudge, and decree, that judgment be entered in favor of the plaintiff, against the estate of Wm. Emerson, for the sum of one thousand seven hundred and eighty-eight dollars, sixty-two cents, with int. from judicial demand, until paid, and costs of court.

New Orleans, February 8th, 1830.

(Signed,) JS. PITOT, *Judge.*

STATEMENT OF FACTS.

CHAS. H. HALL,
vs.
CHAS. BYRNE,
Tutor of Curator of Minors Emerson.

Court of probates, estate of the Wm Emerson.
Statement of facts agreed on between the parties hereto.

1st. The judgment in this case as recorded herein.

2d. The money out of which plaintiff claims to have his judgment satisfied, was received in the month of ——— last, by defendant, in pursuance of a judgment rendered in the U. S. district court, for the eastern district of Louisiana, a copy of which is here annexed, marked A. Said last mentioned judgment was rendered in pursuance of an act of Congress, here annexed, marked B.

If the moneys thus received, under the judgment of the United States court, and in pursuance of the act of Congress aforesaid, be liable for the debts of said Emerson, contracted or incurred during his life time, then this court will decree payment accordingly. If not, then this court will decree, that said pl'ff. has no claim to be paid out of the moneys he received as aforesaid.

(Signed,) LEVI PEIRCE, *Att'y.*
(") ALFRED HENNEN, *Att'y. for Petit'r.*
(") M. W. HOFFMAN, *Att'y. for Cur.'* &c.

Order, U. S. district court.

Filed May 10th, 1832.

173.

DISTRICT COURT UNITED STATES, *Eastern District of Louisiana.*
New Orleans, Tuesday 10th January, 1832.

THE UNITED STATES, &c.
vs.
THE BRIG JOSEPHA SEGUNDA & 152 SLAVES.

On motion of M. W. Hoffman, and on filing a consent and stipulation in this case, signed by all the parties interested, it is ordered, that the said stipulation and agreement, be made the decree of this court, and that, in pursuance thereof, the money now remaining in court after payment of costs, be paid over to Beverly Chew, the legal representative of Ed. Lunin, and the legal representative of William Emerson, dec'd, and it is further ordered, that the bond of A. Hawkins, with G. W. Morgan as his security, for the sum of three thousand dollars————in this case, by the said I. W. Hawkins, be cancelled and annulled, and the said G. Morgan, is hereby discharged from all demands for any moneys in his hands. An extract from the minutes.

[SEAL.] Signed: BYRNE B. WALKER, *D. C.*

AGREEMENT OF COUNSEL.

C. H. HALL
vs.
GHA'S BYRNE.

It is agreed that either party may recur to the record and proceedings, in the case of the Josepha Secunda, and use any of the papers on file therein, on the trial of this case in the Supreme Court.

Signed: M. W. HOFFMAN.
Signed: A. HENNEN,
Att'y for pl'ffs.

In the court of probates, in, and for the parish and city of New Orleans, thursday, 14th April, 1836.

Present, the honorable J. Bermudez, judge.

CHA'S H. HALL
vs.
THE ESTATE OF WM. EMERSON.
Charles Byrne, Curator.

This cause came regularly on this day for trial.

HENNEN & PENCE, *for plaintiff.*
HOFFMAN, *for defendant.*

When the case was opened, and by consent of counsel, continued over until to-morrow morning, the 15th inst., at 10 o'clock.

In the court of probates, in, and for the parish and city of New Orleans, friday, 15th April, 1836.

CHA'S H. HALL
vs.
THE ESTATE OF WM. EMERSON.
Charles Byrne Curator.

Present, the honorable J. Bermudez, judge.

This case came on again this day, pursuant to adjournment yesterday.

HENNEN, *for plaintiff.*
HOFFMAN, *for defendant.*

When, after hearing argument of respective counsel, the case was submitted, and the court took time to advise.

In the court of probates, in, and for the parish of New Orleans, Saturday, 16th April, 1836.

CHARLES H. HALL
vs.
THE ESTATE OF WM. EMERSON.
Charles Byrne, Curator.

The plaintiff obtained in this court, a judgment against the estate of Wm. Emerson, for the sum of one thousand seven hundred and eighty-eight dollars sixty-two cents, with interest from judicial demand until paid, and costs of suit; a copy of the same was served on Charles Byrne, the curator of the estate.

William Emerson died in the year 1828, previous to that time, he, as surveyor, B. Chew, as collector, and E. Lorrain, as naval officer of the port of New Orleans, had, on their sole expense, the brig Josepha Secunda, condemned in the name of the United States, in the district court of the United States, for the Louisiana district, for an infraction of the slave laws; they claimed title to the proceeds of this seizure, as the true and actual captor and seizors, who made the last and only effectual seizure, and prosecuted the same to a final decree of condemnation. The decree of the district court allowed the claim, but the case having been brought up before the Supreme Court of the United States, that tribunal reversed the judgment, on the ground that Congress had made no provision for their compensation, and they were left, in common with those who made the military seizure, to the liberality of the government. Thereupon, the said collector, and surveyor, and naval officer, applied for relief to Congress, and obtained from that branch of the Government, an act entitled "An act for the relief of Beverly Chew, the heirs of Wm. Emerson, deceased, and the heirs of Lorrain, deceased," the same being duly approved on the 3d March, 1831; and in compliance with the provisions of said act, upon motion before the district court, the moneys remaining in court after the payment of costs, were paid over to Beverly Chew, and to the legal representatives of both Emerson and Lorrain.

The question for the decision of this court, is, whether the money received by the minor children, as the legal representatives of William

Emerson, by virtue of the act of Congress aforesaid, can be made liable for the payment of the debts of their father.

The court considering that it results from the preamble and wording of the said act, an explicit intention on the part of Congress to compensate B. Chew, W. Emerson, snd E. Lorrain, for the services rendered, and expenses incurred by them in the seizure, prosecution, and condemnation, in the name of the United States, of the brig Josepha Secunda, that Congress has considered them entitled to the money and supplied by law, what seemed to have been an omission in their legislation; that there remains no doubt, that the claims to the moneys recovered by the heirs, as legal representatives of William Emerson, makes a part of the estate of the said deceased, to which the said heirs have no claim, until after the payment of the debts of their deceased father.

It is ordered, adjudged, and decreed, that the judgment rendered in favor of the plaintiff, be satisfied out of these said moneys, or any other assetts, belonging to the said estate, in the hands of its curator, or in those of the heirs of said deceased, with costs of suit.

NEW ORLEANS, *April 23d*, 1836.

Signed: T. BERMUDEZ, *Judge.*

PETITION OF APPEAL.

To the honorable the Judge of the court of probates.

The petition of Charles Byrne, curator and guardian of the heirs of Wm. Emerson, deceased, humbly sheweth: That there is error in a judgment of this honorable court, rendered in a case, wherein—— Hall is plaintiff, and your petitioner, as the curator of the heirs of Wm. Emerson, is defendant. He, therefore, prays, that an appeal may be allowed, according to law, on his giving bond with James W. Byrne as security, in such sum as may be required, &c.

Signed: WM. WORTHINGTON, *for defendants.*

BOND.

The State of Louisiana.—Know all men by these presents, that we, Charles Byrne, orator and guardian of the heirs of William Emerson deceased, and James W. Byrne, as his security, are held and firmly bound unto Charles Henry Hall, his executors, administrators and assigns, in the sum of twenty-four hundred and eighty-one dollars, for the payment whereof, we bind ourselves, our heirs, executors, and administrators firmly by these presents, sealed with our seals, and dated in the city of New Orleans, on this third day of May, in the year of our Lord one thousand eight hundred and thirty-six.

Whereas, the above bounden, Charles Byrne, this day filed a petition of appeal from a final judgement rendered against him as curator and guardian aforesaid, in the suit of Chas. Henry Hall, in the court of probates, in and for the parish and city of New Orleans, on the —— day of ——

Now the condition of the above obligation is such, that the above bound Charles Byrne shall prosecute his appeal, and shall satisfy

whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in the appeal; otherwise, that the said James W. Byrne, his security shall be liable in his place.

(Signed) JAS. W. BYRNE.

Curator and guardian of the heirs of Wm. Emerson, dec'd.

Signed, sealed and delivered in the presence of (sd.)

CHS. BYRNE, [L. S.]

ORDER.

Let an appeal be allowed in this case, upon the appellant giving bond and security in the sum of twenty-four hundred and eighty-one dollars. Let James W. Byrne be accepted as the security on the bond, and let said appeal be returnable in the Supreme Court on the first Monday of June next, 1836.

(Signed) J. BERMUDEZ, *Judge.*

New Orleans, 3d May, 1836.

Certificate of the Clerk of the Probate Court.

I do hereby certify, that the above and foregoing ten pages, contain a full and complete transcript of all the proceedings had, and of all the evidence adduced by the parties upon the trial of the suit entitled "Chas. H. Hall *vs.* the estate of William Emerson, Chas. Byrne, curator," No. 525 of the docket of this court, one line erased and four interlined, "approved."

In witness whereof, I have hereunto set my hand and affixed the seal of the court of probates, in and for the parish and city of New Orleans, at the city of New Orleans, this 4th day of June, in the year of our Lord one thousand eight hundred and thirty-six, and sixtieth of the independence of the United States of America.

(Signed) S. BLOSSMAN.

Ag. Regr. of Wills. [L. S.]

Certificate of the Judge of the Court of Probates.

I, J. Bermudez, sole judge of the court of probates, in and for the parish and city of New Orleans, do hereby certify, that the aforegoing transcript, contains all the evidence adduced by the parties upon the trial in the first instance of the suit entitled, "Chas. H. Hall *vs.* the estate of William Emerson, Chas. Byrne, curator," No. 525 of the docket.

Witness my hand and private seal, at the city of New Orleans, this 4th day of June, A. D. 1836, and 60th of the independence of the U. S. of America.

(Signed) J. BERMUDEZ, *Judge.*

Said Record is endorsed as follows:

[2983.] Court of probates—Estate of Wm. Emerson. Chas. H. Hall, appellee, *vs.* the estate of Wm. Emerson, appts. Hoffman

& Worthington, for appellants. Hernnen & Price, for appellees. Supreme Court—filed June 6th, 1836.

(Signed) A. CUVILLIER, *Dy. Clerk.*

Points filed by the Appellee—filed December 2d, 1836.

C. H. HALL, *vs.* CHAS. BYRNE. } Supreme Court—Points of plff.

1. The money received by the defendant as tutor of the minor children of Wm. Emerson, formed part of his estate.
2. And was consequestly liable to the payment of his debts.
3. And the judgment of plff. should be satisfied thereout.

(Signed) A. HENNEN, *Att'y. for plff.*

Endorsed:

[2983.] Supreme Court—C. H. Hall *vs.* C. Byrne, points of appee. (Sd.) HENNEN.

Supreme Court: filed December 2d, 1836.

(Sd.) A. CUVILLIER, *Dy. Clerk.*

Points filed by the heirs, January 4th, 1837.

Supreme Court:

EMERSON'S HEIRS, *ads.* HALL. } Points.

1st. The fund which is the subject of controversy in this case forms no part of the estate of Emerson.

2. His right was entirely repudiated by a decision of the Supreme Court of the U. S.; and, during his life, he had no claim.

3. The act of Congress granting this fund to his representatives, was passed upon an application on behalf of his heirs, and conferred a bounty upon them, which the creditors of Emerson cannot claim. (Sd.) WM. M. WORTHINGTON,

For the heirs.

Endorsed:

[2983.] Supreme Court.—Emerson's heirs *ads.* Hall—points.

Supreme Court—filed January 4th, 1836.

(Signed) A. CUVILLIER, *Dy. Clerk.*

Supreme Court of the State of Louisiana.

Tuesday, February 7th, 1837.

The Court met—present the honorable

F. X. MARTIN,
HY. A. BULLARD.

ESTATE OF WM. EMERSON,
CHAS. H. HALL, *Appellee*,
[2983] *vs.*
THE ESTATE OF WM. EMERSON, *Appts.*

This cause was this day argued, whereupon the court took time to consider of their decree.

Opinion delivered by the Supreme Court.

Supreme Court of the State of Louisiana: Monday, February 27th, 1837. The court met—Present, the honorable

F. X. MARTIN,
HY. A. BULLARD.

ESTATE OF WM. EMERSON,
CHAS. H. HALL, *Appee.*
[2983.] *vs.*
THE ESTATE OF WM. EMERSON, *Appts.*

Appeal from the court of probates of the parish and city of New Orleans. In this case the court this day delivered their opinion in writing, in the words and figures following, viz:

The question we are called upon to solve in this case, was presented to the court below, on a case stated. The parties agreed that plaintiff has recovered a judgment against the succession of Emerson; that the money out of which he claims to have his judgment satisfied, was paid over to the defendant, in pursuance of a judgment rendered by the District Court of the United States, for the Eastern District of Louisana, and that judgment was rendered in conformity with a special act of Congress. If the moneys thus received be liable for the debts of Emerson, contracted during his life time, then the court will decree payment accordingly, if not, then the court will decree that the plaintiff has no claim, to be paid out of that fund.

The question therefore, is, whether the fund thus received belongs to the children of Emerson, independently of his creditors, or whether it forms assets in the hands of the curator of his estate, and this depends upon the proper construction of the act of Congress.

It appears by the preamble of the act, and other evidence before us, that B. Chew, E. Dorrain, and W. Emerson, at their joint trouble and expense, had seized and prosecuted the Josepha Segunda, for an infraction of the laws of the Union, for the suppression of the slave trade, and that she was condemned by the District Court for the Louisiana district, and a portion of the proceeds was decreed to them as captors, on an appeal to the Supreme Court of the United States, that judgment was reversed so far as related to the claim of those persons, the Court being of opinion, that in consequence of an omission in the acts of Congress, they were not entitled to any part of the prize. While things were in that situation, Emerson died, and a memorial was presented to Congress by Chew and Lorrain, and the children of Emerson, and the act in question was passed, by which

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the District Court was authorized and directed to order the proceeds of seizure now deposited &c. to be paid over to said B. Chew, and the legal *representatives* of W. Emerson and E. Lorrain, respectively.

It is contended by the counsel for the appellant, that Emerson in his life time was not entitled to this fund, and consequently that it cannot belong to his succession; that it was granted to his children as a pure gratuity, a donation, a proof of natural bounty, any gratitude for meritorious services certainly but, services which under the existing laws of the country entitled him to nothing; that the words legal representatives used in the act of Congress, is mere *descripted* personal; that Emerson had no right, of which the act of Congress may be considered a restoration or a recognition, and consequently that the money given does not belong to his estate.

It is true that without the interposition of Congress, Emerson was without remedy, inasmuch as the sovereign cannot be sued; but it is equally true, that the seizure and condemnation of the slave ship in accordance with the policy of Government, at the expense, and by the personal exertions of Emerson and his associates, benefited the treasury of the Union; that the Government if it had retained the proceeds of the ship, would have profited by the labor and expenditure of money on the part of those citizens. The want of remedy is not always a safe test of right. It appears to us there was an equitable right, and that the subsequent act of Congress is evidence of the liberal justice of the Government, rather than a pure donation or gratuity. The expense and labor employed in that prosecution diminished *pro tanto*, the means of Emerson to provide for his debts, and formed the foundation for a joint claim for indemnity. If similar services had been rendered to an individual, even without his express request, the person rendering them as *nogociorum gester*, would be entitled to an action to recover back the expenses thus beneficially incurred.

Let us suppose that Emerson had afterwards become insolvent, and had executed an assignment of all his property, rights and actions. Would this right or claim have passed to his syndies? Numerous cases to which we have been referred, tend to establish the affirmative of this proposition. The case of Comegys et al *vs.* Vasse, 1 Peters, 193, relied on by the counsel for the appellants, is strongly analogous. Vasse had been an underwriter, and had paid various total losses, occasioned by unjust seizure and condemnations by Spain. The assured had abandoned to him; he retained nothing but the feeble *spes recuperandi*, depending on the justice of a foreign government, and the chances of negotiation between his own government and Spain. He became a bankrupt, and extended an assignment according to the bankrupt law of 1800. His assignees many years afterwards received a share of the indemnity for unjust spoliation, provided for by the treaty of limits of 1819, with Spain. Vasse instituted his action against his assignees, to recover back the amount thus received, on the ground that his claim did not pass by the assignment. The Supreme Court of the United States, decided against him. In delivering the opinion of the Court in that case, Mr. Justice

Story strongly combats the doctrine established by the maker of the rolls in the case of Campbell vs. Mullett, 2 Swantston's Report, 551, which arose under the British treaty of 1794, in which he said, that whatever the individual obtains is not on the ground of right or private property, but of hardship and injustice. Though this, therefore, is not a case of pure donation, as of a gift without any thing in the nature of a consideration, yet for the purpose of being contrasted with property or right, it is a donation, not a restoration of a former right, but from a new fund belonging to an independent authority, a grant to a sufferer for what he has lost." The Supreme Court on the contrary, held that the party might with reference to mere municipal law, be without remedy, but with reference to principles of international law, he had a right both to the justice of his own, and the foreign sovereign; that the right to compensation in the eye of the treaty, was just as perfect though the remedy was merely by petition, as the right to compensation from illegal conversion of property in a Municipal Court of Justice. They adopted the principles sanctioned by Lord Hardwhich, in the case of Randall vs. Cochran, 1 Vezey, 1981, in which it was settled that the right of indemnity accompanied the right of property, and that if the party had died before or after the treaty was made, and compensation had been suqsequently decreeed it would have been assets, and distributable as such in the hands of his executors and administrators. 1 Peters, 193.

The case here referred to as decided by Lord Hardwich, is a very strong and a very remarkable one. The King of England had granted letters of refusal against the Spaniards for the benefit of his sub jects, in conideration of losses sustained by unjust captures, and commissioners were appointed to distribute the produce of these reprisals among the sufferers. The commissioners would not permit the underwriters, but only the owners, to make claim for the losses, although the latter had already been satisfied for their losses by the former. The Lord Chancellor decreed on the contrary that the owners should account for the same to the insurers.

Here the almost hopeless chance of indemnity for losses sustained by the injustice of a foreign government, was treated as a right which passed by tacit subrogation to the underwriters, by whom the losses had been paid; and a fund provided by the extraordinary measure of reprisal was considered not as a bounty to the sufferers but substantially as an indemnity to the underwriters. 1 Vezey 98.

The case of Evans and al. *vs.* Charles and al., *Anthruters Report*, 128; has been relied on in this case. The question was to which of four sets of claimants a certain fund belonged, which had been given by will, to such of the creditors of the husband of the testatrix, as had compounded with him, in his lifetime, for ten shillings in the pound, of a certain debt, or to their personal representatives. The reasoning of the Chief Baron has not much connection with his conclusion, according to his own candid and singular confession, that the court of exchequer, had found itself much puzzed to form any determination; and we now decide it," says he, rather because it is necessary to award the property to some one, than that we see clearly a superior right in any.

The only question is stated to have been who are entitled to take under the description of the *personal representatives* of the creditor, and it was decided, that the administration of the deceased creditors was entitled beneficially to the bequest, and not the next of kin, nor the residuary legatee of the creditor. The difficulty appears to have been in raising an implied trust in relation to property, which was not vested in the original creditor after he compounded, for ten shillings in the pound, the remaining ten shillings being long afterwards provided for by his widow. The case turned evidently upon a distinction peculiar to the common law, between a legal and an equitable right, and the court decided in favor of the administration, because no *cestin que trust* had shown himself entitled to claim through the person who had the legal title by answering to the description of personal representative.

The case of Destrehan, *vs.* Destrehan's executors, 4 Martin, N. S. 557, has also been alluded to in argument. In that case this court held that grand-children coming to the partition of their grand-father's estate in concurrence with uncles, aunts are not obliged to collate an onorous obligation due by their father, the children have renounced the succession of their father, who died before their grand-father. The analogy between that and the present case is extremely faint.

Emerson was, therefore, in our opinion, seized in his lifetime of an equitable right, to be remunerated for services rendered and money expended—a right susceptible of being assigned and transferred as much as the claims of our citizens against foreign government for unjust condemnations and seizures—a hope, a reasonable imputation coupled with a pecuniary interest. If such a right could be assigned, it was certainly transmissible at his death to his succession; and those who are appointed by law to inherit his property, complied with the obligation of paying his debts. If he had bequeathed his claim or right by will, we cannot doubt the legacy would have been valid. Having died intestate, we must consider it as having descended and forms a part of his succession. According to the code, succession not only includes the rights and obligations of the deceased at the time of his death, but all that has accrued thereto since the opening of the succession, a 869. No right whether legal or equitable, perfect or imperfect, is lost and annihilated—they all descend according to the legal order of succession. *Hereditas nihil aliad est quam successio in universum jus quod definctus habuit.*—L. 24.

When Congress authorized this fund to be paid over to the legal representative of W. Emerson, we are not warranted in supposing that they intended to give it a different destination from what the law would have given it. The legal representative of the deceased person, we understand to be one standing in the rights of the deceased by authority of law. The defendant having received the money in that capacity, it is, in our opinion, liable in his hands for the debts of the deceased.

It is therefore, ordered, adjudged, and decreed, that the judgment of the court of probates be affirmed with costs.

Petition for a rehearing filed March 6th, 1837.

SUPREME COURT.

THE ESTATE OF WM. EMERSON,
ads.
CHARLES H. HALL.

The defendants in the case respectfully ask a rehearing.

In a case of so much doubt, investigation would, with more certainty, lead to truth; and as the court is about to undergo an almost radical change, we submit it to your honors, whether in such a case as the present, the ends of justice might not be promoted by a re-argument.

We are the more solicitous on this subject as from an attentive perusal of the opinion delivered in the case, we are persuaded that the argument which we had the honor to submit, no doubt from the want of perspicuity in the manner of delivering it, was not precisely apprehended by the court.

This conviction is forced upon our minds by the course which the court has taken to evade the force of the authorities referred to.

The case from ———— was introduced to show that the equity existing in behalf of the creditor of Floyer, was as strong as that of Emerson in this case, and yet that equity was not sufficient to sustain a claim under him. It is not material to the object which we have in view to whom that was given by the decree of the court; it is sufficient for our purpose to show that the claim to it, as a part of the estate of the creditor, was not sustained.

Vasse's case is one of positive right, and bears not the slightest analogy to the present, and yet your honors from some strange misconception, have placed us in the absurd predicament of having introduced that case to sustain our claim.

This case was referred to in the hope that the definitions contained in the opinion, of a right or claim which may exist in contemplation of the general law, might exhibit to this court the correct distinction between a legal claim of right and an equitable claim to gratitude, or even a more substantial bounty.

Your honors say that "the want of remedy is not alway a safe test of right." It appears to us there was an equitable right. "We are unfortunate in not being able to arrive at the same conclusion."

That Emerson did not fail in his right from any want of power to enforce it, or in the words of the court, from any want of remedy, is abundantly evident from the case of the Josepha Segunda, in 10th Wheaton's Rep., and that he had no right either *legal* or *equitable*, except upon the *bounty* of the Government, is expressly declared in that case, which we had always presumed would be considered as the highest evidence of the law.

Resting this application upon the binding authority of the above case upon this point, we respectfully solicit a rehearing.

WM. W. WORTHINGTON.

[ENDORSED, 2,983]

Supreme Court. Emerson's heirs ads. Charles H. Hall, petitioning for a rehearing. Supreme Court. filed March 6th, 1837.

(Signed) A. CUVILLIER, *Dy. Clerk.*

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SUPREME COURT *of the State of Louisiana.*

MONDAY, *April 24th*, 1837.

The Court met.—Present: the honorable F. X. Martin, H'ry A. Bullard, H'ry Carleton.

ESTATE OF WM. EMERSON,
CHARLES H. HALL, *appee.*
[2,983.] vs.
THE ESTATE OF WM. EMERSON, *appls.*

It is ordered that the rehearing prayed for in this case be refused.

UNITED STATES OF AMERICA,
Supreme Court, E. D., State of Louisiana.

I, N. B. L. Breton, clerk of the Supreme Court of the State of Louisiana, for the Eastern district, do hereby certify, that the foregoing twenty-nine pages contain a true copy of the transcript of the proceedings had in the Court of Probates for the Parish and city of New Orleans, in a certain suit wherein Charles H. Hall was plantiff and the estate of William Emerson was defendant, and of the proceedings had in this court on the appeal taken by the estate of Wm. Emerson, which appeal is now on the files thereof, under the No. 2,983.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at the City of New Orleans, this 19th day of June, 1837, and in the 61st year of the Independence of the United States of America.

N. B. L. BRETON, *Clerk.*

STATE OF LOUISIANA, *Supreme Court.*

I, F. X. Martin, senior Judge of the Supreme Court of the State Louisiana, do hereby certify, that N. B. L. Breton is clerk of the Supreme Court, that the signature of "N. B. L. Breton" to the within certificate is in the proper hand-writing of him, the said clerk; that said certificate is in due form of law, and that full faith credit is due to all his official acts as such.

In testimony whereof, I hereunto set my hand and seal, at the City of New Orleans, this 19th day of June, in the [SEAL] year of our Lord, one thousand eight hundred and thirty-seven, and in the sixty-first year of the Independence of the United States of America.

F. X. MARTIN, *S. J. S. C.*